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AMERICAN SHIPBUILDING ASSOCIATION

December 5, 2002

Defense Acquisition Regulations Council
ATTN: Ms. Amy Williams
OUSD (AT&L) DP (DAR)
IMD 3C132
3062 Defense Pentagon
Washington DC 20301-3062

VIA FAX: 703-602-0350

RE: DFARS Case 2002-D009 (Foreign Acquisitions)

Dear Ms Williams:

The American Shipbuilding Association (ASA), which represents the six major shipbuilders and 22 companies engaged in the manufacturer of ship systems, urges the Department of Defense to withdraw the proposed rule changes because the tenor and wording of some of the specific proposed changes are inconsistent with the letter and intent of the Buy American Act. In this regard, the cumulative effect of the proposed changes, subtle and direct, will facilitate the circumvention of the Buy American Act by regulatory fiat.

The circumvention will occur through the expanded definition of "domestic end product" in **225.7001,** which uses the conjunctive **"and"** so that a product may qualify for exemption from the Buy American Act, **even if zero percent** of the product is manufactured or transformed in the United States. Other examples of the subtle and direct changes that cumulatively will emasculate the Buy American Act include the following:

- **225.101:** The two-part test that is proposed to be used to determine "whether a manufactured end product is a domestic end product" has the potential to allow a manufactured end product that is 100 percent manufactured in a "qualifying "country" to be determined to be a **"domestic end product."**
- **225.103 (B):** Expands a narrow exception for "information technology products" to what could become a *de facto* blanket exception to the Buy American Act for all "end products that are substantially transformed in the United States."
- **225.103 (ii) (A) (3) (i):** Changes the phrase from **"American good"** to "domestic end product."

225.103 (b) (iii) (B): Changes the focus by introducing the word "foreign" and by changing the language to read, "must be acquired from the original **foreign** manufacturer or supplier."

- **225.402:** Eliminates subparagraph (2), which makes a specific reference to **"U.S. made end products."**
- **225.502:** The rewrite is very convoluted and confusing, and is inconsistent with the stated purpose of the rewrite, which was to "simplify and clarify policy pertaining to the acquisition of supplies and services from foreign sources." Furthermore, the rewrite summarily perpetuates the notion that **"qualifying country end products are exempt from application of the Buy American Act (BAA) or Balance of Payments Program (BPP),"** notwithstanding the large trade deficit that continues to grow at a record pace almost every month, and stands at an all time historical high. Additional concerns include the fact that the significant rewrite of this Section eliminates the requirement for **"two tests that must be met to determine whether a manufactured item is a domestic end product;"** and creates a scenario whereby a foreign offer that is lower than the lowest domestic offer may be accepted by a regulatory pre-determination that it is exempt from the BAA and the BPP simply because the regulation says so.
- **225.7003:** Although this proposed Section reiterates the prohibition against awarding a contract to a foreign country that discriminates against defense items produced in the United States to a greater degree than the United States discriminates against items produced in that country, there is no specific criteria for making such a determination. Consequently, semantics and unsubstantiated allegations of discrimination could be used as a basis for waiving compliance with the Buy American Act, and further undermine the letter and spirit of that Act.

For the above stated reasons, the American Shipbuilding Association urges the Department of Defense to withdraw the proposed changes, and to change the focus of any future rewrite from "How to Circumvent the Buy American Act" to "How to Implement the Buy American Act."

Sincerely,

Cynthia L. Brown
President